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Hearing Date: July 15, 2020
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SEARS HOLDING CORPORATION, *et al.*,

Case No. 18-23538 (RDD)

Debtors.

(Jointly Administered)

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**ARCA INDUSTRIAL (NJ), INC.'S LIMITED OBJECTION TO
DEBTORS' NOTICE REGARDING SECOND DISTRIBUTION PURSUANT TO
ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Arca Industrial (NJ) Inc. ("Arca") hereby files this limited objection (the "Objection") to Debtors' Notice Regarding Second Distribution Pursuant to Administrative Expense Claims Consent Program (Docket No. 8062; the "Notice of Second Distribution"). In support of the objection, Arca states as follows:

1. Arca timely submitted Proof of Claim Nos. 2957 and 5167 (which are incorporated herein by reference), and timely submitted ballots opting-in to the Debtors' Administrative Expense Claims Consent Program (the "Consent Program") and has fully complied with the requirements of that program.

2. Debtors did not make any initial distribution to Arca.

3. On January 15, 2020, Debtors and Arca settled Debtor's objections to Arca's Administrative Claims for the total aggregate amount of \$788,847.79.

4. That settlement agreement was embodied in the attached Exhibit 1 and Exhibit 2, which are incorporated herein by this reference (the “Settlement Agreement”).

5. On June 26, 2020, Debtors filed their Notice of Second Distribution (Docket No. 8062).

6. The Notice of Second Distribution properly lists Arca on Exhibit C as a Non Opt-Out Participant in the second distribution, but incorrectly lists the amount of Arca’s Settled Administrative Claim Amount as \$217,134.12 when in accordance with the party’s settlement agreement the amount is properly \$788,847.79 (*see* Exhibit 1 and Exhibit 2), and it incorrectly lists Arca’s estimated second distribution amount as \$62,317.49 when Arca’s *pro rata* share based on its actual settlement amount should be at least \$226,399.30.

7. On June 29, 2020, Arca’s counsel sent Debtors’ counsel and Restructuring Advisor M-III Partners, LP (M-III) an email advising them of the error in their listing of Arca’s Settled Administrative Claim Amount and Estimated Second Distribution Amount (*see* Exhibit 3), but Arca’s counsel has not received any response to that communication whatsoever. Arca’s counsel also followed up that email by leaving voicemails with Debtors’ counsel and Debtors’ Restructuring Advisor M-III. To preserve its rights under the Settlement Agreement, Arca is filing this Limited Objection.

8. Giving Debtors’ the benefit of the doubt that the failure to list the agreed amount is simply a typographical error, Arca asks that the Notice of Second Distribution be corrected as requested herein. If this is not just an error, then Arca hereby moves the Court to enforce the Settlement Agreement, and to find that Debtors’ failure to honor their settlement with Arca constitutes an egregious breach of the Settlement Agreement, a material violation of the Consent

Program by Debtors, and constitutes an improper preference by Debtors of payment to certain other creditors over Arca in violation of Bankruptcy law.

9. Based on the foregoing, Arca moves this honorable Court to issue an order that the actual amount of its Settled Administrative Claim is \$788,847.79 and that Arca is entitled to a Second Distribution in an amount at least equal to \$226,399.30.

WHEREFORE, pursuant to the parties' Settlement Agreement, 11 U.S.C. § 105, and the terms of the Administrative Expense Claims Consent Program as set forth in this Court's Confirmation Order, this Court should order Debtors to correct Exhibit C to the Notice of Second Distribution to list Arca's Settled Administrative Claim Amount as \$788,847.79 and order Debtors to make a second distribution to Arca in an amount at least equal to \$226,399.30.

Respectfully submitted,

Dated: Cleveland, Ohio.
July 2, 2020

MILLER GOLER FAEGES LAPINE LLP

By: /s/ Deborah J. Michelson

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Attorney for Creditor Arca Industrial (NJ), Inc.

UNITED STATES BANKRUPTCY COURT
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I, Deborah J. Michelson, an attorney admitted to practice in the State of New York, hereby certify that, on July 2, 2020, I caused true and complete copies of ARCA INDUSTRIAL (NJ), INC.'S LIMITED OBJECTION REGARDING DEBTORS' NOTICE OF SECOND DISTRIBUTION PURSUANT TO ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM to be served upon each of the parties listed below via pre-paid properly addressed U.S. mail:

The Honorable Robert D. Drain
United States Bankruptcy Judge
United States Bankruptcy Court, S.D.N.Y.
300 Quarropas Street, Room 248
White Plains, NY 10601

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c/o Brian Griffith
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Dated: Cleveland, Ohio.
July 2, 2020

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